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BEACON STREET:

ITS IMPROVEMENT IN BROOKLINE BY CONNECTION
WITH COMMONWEALTH AVENUE.

HISTORY OF THE MOVEMENT,

ARGUMENTS OF

MOSES WILLIAMS, Esq., COUNSEL FOR THE TOWN OF
BROOKLINE, AND CLEMENT K. FAY, Esq., COUN-
SEL FOR THE WEST END LAND COMPANY,

TOGETHER WITH THE

STATEMENTS OF MR. HENRY M. WHITNEY AND OTHER PROMINENT
CITIZENS IN FAVOR OF THE PETITION OF THE SELECT-
MEN FOR AUTHORITY TO LAY OUT BEACON
STREET AS A TOWN WAY.

Before the Legislative Committee on Roads and Bridges.

BROOKLINE:

The Chronicle Press: C. A. W. Spencer.

1887.

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BEACON STREET IMPROVEMENT.

The proposed widening of Beacon Street was first brought before the town of Brookline by a petition submitted to the Board of Selectmen, on Monday, Aug. 9th, 1886. This petition was signed by about one hundred of the most influential and intelligent citizens of the town, scarcely any of whom had a direct pecuniary interest in the matter. The petition requested the selectmen "to lay out a townway, or townways, by the side of the highway in said town, called Beacon Street, beginning at or near St. Mary's Street, at the boundary line of the city of Boston, and ending at the boundary line of said city, easterly of the Chestnut Hill Reservoir, so as to make an avenue including the present area of Beacon Street 200 feet in width. Believing this wide avenue would be very beneficial to the public, and would also increase the value of the real estate by or near which it was constructed, the undersigned respectfully request you to lay out said townway or townways, under the provisions of law authorizing the assessment by betterments." The petition was dated Brookline, July 27th, 1886.

This petition, with a full description of the proposed improvement, was published in The Chronicle (a local newspaper with a large circulation), Aug. 7th, 1886.

Public interest was at once aroused, and the widening of Beacon Street became the all-absorbing topic in the town. On Tuesday, August 17th, pursuant to public notices, the selectmen gave a hearing on the petition for laying out Beacon Street as proposed, at which there was a very large attendance. Petitions in aid of the original petition were submitted, signed by several hundred more of the citizens. The plan of the street, showing its route, with the property lines and areas of land to be taken, was exhibited to the meeting, and the whole matter was carefully and thoroughly

discussed ; a full account of which appeared in *The Chronicle* of Saturday, August 21st, and also in the *Brookline News*, another local paper which was started Aug. 7, 1886. The selectmen at once entered into the subject with zealous care, and insisted that definite proposals on behalf of the petitioners and the West End Land Company, which originated the enterprise, should be submitted to them. This was done, and the company and a number of abutters submitted in writing to the selectmen agreements to contribute to the carrying out of the project. These agreements were published in *The Chronicle*, October 9th ; and at their meeting, October 11th, Henry M. Whitney, Esq., the president of the West End Land Company, made still further offers of aid to the improvement, which were published in *The Chronicle* and the *Brookline News*, October 16th. A further hearing on the widening of Beacon Street was given by the board October 26th, at which was submitted a report of Messrs. Aspinwall and Lincoln, skillful and reliable engineers and citizens of the town, who had been employed by the West End Land Company to report upon the surveys and estimates of cost of the “proposed extension of Commonwealth Avenue over Beacon Street in Brookline, mainly as designed in line and grade by Messrs. F. L. & J. C. Olmsted,” the eminent landscape architects. Accompanying this report was a carefully prepared list of the abutters on the entire length of the street, together with the frontage on Beacon Street as at present existing, and the proposed frontage on the street as widened ; also, the number of square feet to be taken in each instance, the buildings to be removed, the assessed value of the land per foot, the assessed value of the buildings, and a minute statement of the cost of construction, with ten per cent allowance for contingencies. This report, with all the details, was published in *The Chronicle*, October 30th.

The selectmen, at the meeting of October 26th, voted, “that notice be sent to those abutters, portions of whose estate would have to be taken for the widening, to meet them in conference, on Wednesday, November 3d, at 3 P. M.,” and printed notices thereof were directed to be sent.

At the meeting of November 3d, pursuant to these notices served on the thirty owners of property on the line of the proposed widening, all but six replied, either in person or by letter, to the inquiries of the selectmen as to the prices which they would charge for the land which would be required for the proposed widening of Beacon Street. A full account of this hearing was published in *The Chronicle*, November 6th.

The selectmen in the meantime, after consultation with many citizens and the engineers, decided that the practical benefit of the undertaking would not be interfered with, while the cost would be very largely diminished by lessening the width to 160 feet, from 200 feet as first proposed, and at a meeting held Nov. 15th, new plans for the widening upon the basis of 160 feet were submitted by the engineers. Upon further and careful consideration of the question, the board voted to give public notice of its intention to lay out, under the betterment law, "a townway not exceeding 160 feet in width on the line of Beacon Street." This notice and also an account of the hearing of Nov. 15th, were published in *The Chronicle*, Nov. 20th, and the hearing upon the proposed laying out was appointed for Tuesday, Dec. 7th, at 3 P. M., in the town hall. Meanwhile there was distributed throughout the town an elaborate "plan for the widening of Beacon Street," and it also was folded into *The Chronicle* and *Brookline News* of Saturday, Dec. 4th, and the same issue of those papers had a concise and clear statement from the Messrs. Olmsted, of the character of the proposed improvement, showing the unquestionable benefits which must result therefrom, not alone to Brookline, but to Boston, and, indeed, to the world in general.

The hearing which was held Dec. 7th, was well attended, and a long and interesting discussion, occupying nearly four hours, ensued. The subject of the improvement was carefully sifted; a large plan of the widening was exposed before the meeting; the engineers, Messrs. Aspinwall and Lincoln, gave a full statement of the work proposed to be done, and its cost, and expressed their readiness to answer any and all

questions which might be put to them for information. Several of those present availed themselves of the privilege, and Mr. Whitney, who was also present, gave the meeting all the facts which were asked for. It is worthy of remark that several citizens who, at the start, opposed the enterprise, had in the meantime become convinced of its great advantages, as well as its feasibility, and realized the importance of not letting slip so good an opportunity to do the work at a comparatively moderate cost.

The selectmen were unanimous in their approval of the enterprise, and after the hearing, a full account of which was published in *The Chronicle* and the *Brookline News*, Dec. 11th, they decided to lay out Beacon Street to the width of 160 feet as a townway, in accordance with their own convictions and apparently with the approval of a large majority of the citizens. They were about to proceed in the regular manner to lay it out *as a townway*, when it was suggested by Mr. Williams, the counsel for the town, that inasmuch as Beacon Street had been laid out originally as a *county* way in 1851, there might be some difficulty in the collection of betterments by the town if the selectmen were to proceed without special legislative authority. Accordingly they called a meeting of the citizens, Dec. 20th, at which they submitted a vote authorizing them to petition the General Court “for authority to locate or widen Beacon Street within the town, in the same manner as if Beacon Street were a townway; also, for authority in any such relocation or widening to change the grade of a portion of Beacon Street, in the same manner as if Beacon Street were a townway; also, for authority in any such relocation or widening to discontinue any portion of Beacon Street, in the same manner as if Beacon Street were a townway; also, for authority to the town of Brookline to accept and make valid any such relocation or widening of Beacon Street, in the same manner as if Beacon Street were a townway; also, for authority to the selectmen to assess betterments upon any such relocation or widening of Beacon Street, in like manner as if Beacon Street were a townway.”

The meeting was an unusually large one, and after much debate, in which many of the leading and most reliable citizens participated, it was voted *unanimously* to authorize the selectmen to go to the General Court and ask for the authority, exactly as proposed by them in this vote.

The other facts in this matter will perhaps sufficiently appear in the arguments of Messrs. Moses Williams, Esq., counsel for the town, and Clement K. Fay, Esq., for the West End Land Company, and the clear and comprehensive statements made at the hearing before the Committee on Roads and Bridges, by Messrs. Henry M. Whitney, Henry D. Hyde, Charles U. Cotting, John W. Candler, William Aspinwall, B. F. Baker, town clerk of Brookline, William Lincoln, chairman of the Board of Assessors, and others, who testified in favor of the improvement. It may be said, in conclusion, that scarcely any other public measure in the history of Brookline has so occupied the town's attention. Since it was first started, in August last, every step in the undertaking has been carefully considered; repeated meetings have been held by the selectmen, both in public and in executive session; full accounts of the proceedings have been furnished in the two local Brookline newspapers, which are published every Saturday and are widely read, and the columns of *The Chronicle* have been filled with correspondence on both sides of the question. It is impossible to see how the matter could have been more honestly and thoroughly treated, both by the town and its officials, than it has been up to the present time. The opposition, which was developed, somewhat unexpectedly, at the hearing before the Committee on Roads and Bridges, is no more than would naturally be expected in a town of over ten thousand inhabitants, with sixteen hundred voters, where it is proposed to lay out a townway two miles and a half long, of an unusual width, and at a somewhat large original cost. In the opinion of a large majority of the town, the cost will speedily be returned by the development of unimproved property and the consequent rise in values; but that is, of course, a question for the town itself to decide after this Act

is passed and the selectmen have laid out the road as a townway.

All the foregoing statements as to the history of this subject are true and will not be disputed. No less than seven public hearings, duly advertised, and fully reported in the newspapers for the benefit of those who failed to attend, to say nothing of six months' careful study of the whole question by the selectmen, all attest the care and deliberation which have marked the course of Brookline in this matter.

HEARING UPON THE PETITION OF THE SELECT-
MEN OF BROOKLINE, FOR AUTHORITY TO
LAY OUT BEACON STREET IN BROOKLINE AS
A TOWNWAY.

BEFORE THE COMMITTEE ON ROADS AND BRIDGES, }
IN THE BLUE ROOM, JAN. 25, 26, 27, 1887. }

The petition for the widening and relocation of Beacon Street as a townway, was first read to the committee by Moses Williams, Esq., counsel for the town of Brookline, and the records of the town showing the vote of its citizens at a town meeting held Dec. 20, 1886, authorizing the selectmen to appear and present said petition to the General Court, with a draft of the proposed Act, were submitted. In response to an inquiry by the chairman of the committee, Messrs. Edward Atkinson, George Griggs and Charles H. Stearns announced that they were opposed to the petition, and William H. White, Esq., stated that he represented several citizens of the town who were not opposed to the granting of the petition, but who wished certain amendments of the Act submitted by the selectmen to be adopted, which he subsequently submitted to the committee, together with a petition in their support signed by forty-eight citizens of Brookline. This petition was not left with the committee, but was presented to the Legislature, separately, Jan. 27th. The hearing occupied the whole of Tuesday, Jan. 25th, and the forenoons of the two following days. The presentation of the selectmen's petition and Mr. Williams' opening remarks occupied but a short time, and the rest of Tuesday and a part of Wednesday were given to the remonstrants, who had all the time and opportunity that they asked for to present their objections. Testimony in behalf of the selectmen's petition and arguments by Clement K. Fay, Esq., and others representing the West End Land Company, followed, and Mr. Williams,

counsel for the town, summed up for the selectmen at the conclusion of the hearing. Extracts from the testimony and arguments in behalf of the petition are herewith submitted.

After the remonstrants had been heard, Clement K. Fay, Esq., made the following argument in behalf of the West End Land Company :

ARGUMENT OF CLEMENT K. FAY, ESQ.

Mr. Chairman and Gentlemen :

I shall try to take as little time as possible in what I have to say upon this matter. I shall not attempt to go into any detailed description of the project itself, but will leave that to the man who is the best qualified of any man in the world to do it, — our public-spirited citizen, Mr. Henry M. Whitney, who originated this magnificent project. And when I say “magnificent,” I say it deliberately, and after due thought. It is not a mere flight of fancy ; for this is an improvement which, if carried out, is going to be one of the most marked, and useful, and desirable improvements that has been inaugurated here within the last twenty-five years, or, I may say, since the development of the Back Bay territory of Boston.

Who are the petitioners in this case ? Why are they here ? What do they ask for ? And why do they ask for it ? Those are the questions which you have first to consider as members of this committee. The petitioners are the selectmen of the town of Brookline, four as upright, intelligent, and painstaking public officials as you can find anywhere. Why do they come here ? They come here in obedience to the unanimous vote of the town of Brookline by its citizens in town meeting assembled. That meeting was an unusually large one ; it was a very intelligent one ; and it was unanimous in authorizing the selectmen to come to the General Court and ask for this Act.

Now, why do they ask for it? They ask for it simply because they want to lay out a townway over and adjoining what has been, hitherto, a highway or county way. And why do they do that? It is only that they may be able to deal effectively and properly with the questions of grade damages and betterments. When Mr. Williams, the able counsel for the town, in his opening, yesterday, had unfolded the case to you, and had shown the authority by which the selectmen came here, there was nothing for you to do — and I know it would have given each and all of you pleasure to do it — but to report the act as it stood. But then, for the first time, so far as I am aware, was developed an opposition. Now, I want to contrast, for one moment, the attitude of the petitioners with that of the opponents of this measure. The petitioners are the four proper official representatives of the town, backed up by a unanimous vote of the citizens of the town. The opponents are a mere handful; one of whom — and the one who took up the most time, and who was the most unfair (I am sorry to say, because he is a friend of mine) — was a gentleman who was not at the town meeting.

What is this opposition? Those of you who have had legislative experience, and those of you who are entering upon it, have already learned, or will soon learn, that one of the ways of defeating a legislative measure is to saddle it with “amendments.” These are the tactics that are resorted to by the opponents of this measure. In order to show you how you have been misled, if you have suffered yourselves to believe what has been stated by the other side, I want to call your attention to the misleading attitude of these opponents. And when I say that, I do not say it in any spirit of harshness, because I think there may be an honest difference of opinion on the part of some of them; but it is absolutely essential to the maintenance of their case that they prove this to be a “park” way, and not a “road” way. Now, I want to call your attention to this fact: We have a “park” way in Brookline already, or are going to have, and some of it is delineated on this map before you. In 1875 the city of

Boston accepted the so-called Park Act; and one of the provisions of that Act was that it might become applicable to the adjoining towns, referring particularly to the town of Brookline, which is surrounded on all sides by Boston. It was provided in that Act that we might elect three Park Commissioners, to act in concert, or in harmony with the Park Commissioners of Boston. Five years later, in 1880, the town accepted that Act of 1875, and that is the Act under which the town of Brookline is to do its park work. It has no more reference to the work to be done upon Beacon Street than it has any bearing upon the question of the Fisheries, or on the question of an European war. We have elected three Park Commissioners, and we propose to develop our parkway as soon as Boston develops hers. Then our Park Commissioners will take jurisdiction under the existing Act, and will carry out this work in the territory south of the Boston & Albany railroad, a long distance away, as you will observe, from this contemplated road, not *park*.

Now, gentlemen, bear in mind that one distinction, because that is the focal point in the whole controversy. Beacon Street is a county way; and it was the opinion of Judge Hoar, who is the most eminent ex-justice now living, probably, in this Commonwealth, that the selectmen might go ahead and lay it out as a townway, without any legislation. The town thought it was better to get your authority, in order to save all question; because, you can see, yourselves, that on the question of betterments an abutter on the street might lie low, and say nothing until the time came to collect the betterments, and then he might say: "This is a *county* way; it was laid out in 1851, and you have no jurisdiction; you can only lay out a townway." And so he might escape the payment of betterments. Therefore, it was thought best that we should get this legislative Act.

We have come up here backed by the almost unanimous sentiment of the town of Brookline; and if any portion of the sixteen hundred voters of that town did not choose to come out to that meeting, and did not choose to take part in the discussion, it is with peculiarly ill-grace that they send

their counsel up here, and appear, either singly or in detachments, to try to assassinate this measure by the adoption of a legislative *ruse* which is perfectly apparent to everybody ; that is, by trying to engraft upon this Act certain amendments which are unreasonable, which are unprecedented, and which will overturn the well-established usage of the Commonwealth for more than a hundred years. In 1786 the Legislature gave the selectmen of towns the right to lay out townways. I suppose most of you come from towns and know just what the procedure is. In Brookline we elect five selectmen annually. Under the Public Statutes there may be three, five, seven, or nine. We have five, and we elected five last year. One of them has resigned ; but while there were still five members of the board, they carefully considered this measure, and they all agreed in favor of it.

The regular procedure in laying out a townway is for the selectmen to frame a case, as it were, for the decision of the town. They say, that in their judgment, “ public necessity and convenience ” require that a way shall be laid out. That is a mere “ legal fiction,” I might say. The laying out is submitted to the town, and the town may accept or reject it. In this particular case, the remonstrants are attempting to fasten upon the simple act of “ laying out a townway ” the restrictions and requirements which are the peculiar features of Park Acts ; and in support of that course, my learned friend, Mr. White, read yesterday from several Acts of that kind, and other exceptional kinds, which provide that a two-thirds or a majority vote by ballot are sometimes required. I admit the force of every one of those. I would not have any change made in such Acts. In fact, the general Park Act of 1882 is, perhaps, superior to the Boston Park Act of 1875, in being a little more strict. But it is altogether unprecedented, unnecessary, and unjust for you to take upon yourselves the heavy responsibility of applying the rules which govern park construction to the simple case of *laying out a townway*. For that is all there is to it. I repeat it, gentlemen, *it is nothing but a townway*, and no amount of assertion can make it otherwise.

Let me give you a little side light on that. Within the last forty-eight hours the Street Commissioners of Boston have voted to lay out *as a street* that part of Beacon Street which is in the city of Boston. They are going to lay it out to meet and continue the Brookline part of this improvement. Now, here is the test. By the theory of these remonstrants this could only properly be done by the Park Commissioners of the city of Boston; the Street Commissioners should have no jurisdiction whatever. But the city authorities of Boston know what they are about and they therefore properly entrust this matter to the Street Commissioners. The Street Commissioners are the parties who act on such matters in the city of Boston, and their position is analogous to that of the selectmen in Brookline. If this were upon the South side of the railroad, where the parkway is to be, the selectmen would have no business to interfere with it; the Brookline and Boston Park Commissioners would have to do it. This matter is wholly within the jurisdiction of the selectmen, and I do not believe that you will stultify yourselves by reporting legislation which is applicable to Park Commissioners. It seems to me it is a fatal objection to the position which has been taken by the remonstrants here.

If Brookline is not competent to deal with this question in the old-fashioned way, as it has been dealt with in this Commonwealth for the last hundred years, then provide, in some form, a guardianship for our town, in order that we may be kept from the commission of all the follies of which these opponents seem so apprehensive. I think I may fairly say to them that if, instead of coming up here and taking my time and your time, they would go to the town meeting and try a little of their eloquence there, where it might do some good, it would be far better than coming here and making the excuse for their coming that our town government is, in their opinion, a failure. Sir, it is disloyal. It begs the question. It assumes that the town of Brookline cannot manage its own affairs. The gentlemen who make these statements, make them in the face of the undisputed fact that the six hundred of our citizens, in town meeting assembled, unanimously endorsed this very thing.

I feel that I ought to apologize for going so fully into this matter as I have. I have been compelled to do so because the hearing has taken a wider range than, technically, it was entitled to. At the same time I cordially commend the spirit of the chairman in allowing the fullest license to these remonstrants. We have no desire to stifle anything which is reasonably and fairly offered in opposition to this measure. On the contrary, we invite the fullest investigation.

It is hardly worth while for me to call attention to the fact that the flings about the money which my clients are to make out of this improvement, are unworthy the name of argument. No matter how much money they make out of it. If the town of Brookline is to be benefitted by it, if its people are to pay for it, if its citizens want it, may I ask, plainly, whose business is it outside of the town of Brookline? I say we are competent to manage our own affairs.

There was a petition put in here by remonstrants representing, it was said, one-tenth of the valuation of the town, and there were forty-eight names signed to it. There are 1,600 voters in Brookline. You can ask them separately to sign a petition, although you cannot get all of them to attend a town meeting. So that the proportion of the men who have signed the petition against this measure is practically insignificant. Just think of it; forty-eight out of 1,600 have signed the petition! But what does a petition amount to? Before you have been here much longer, gentlemen, you will find out, I think, that petitions are about as meaningless, oftentimes, as anything that can well be imagined. A petition is carried to a man; he looks at it, sees that somebody else has signed it, and does not read it, but he signs it *because his friend has*. Another man is very busy, and he signs it without looking at it and without a thought. Oftentimes men sign a petition simply to get rid of the applicant. So I say a petition with forty-eight names upon it is not even a satisfactory test of the judgment of those who have signed it.

The opponents offer here something which is absolutely unique in the legislation of this Commonwealth. One of

their amendments is that *this Act shall be accepted by a two-thirds vote, by ballot, of the citizens*. That is absolutely without precedent in this Commonwealth. It is so unfair that Mr. White, honorable man that he is, when I asked him why he introduced so extraordinary a proposition as that, said that he thought it might end the question at the outset and save a good deal of money, or something to that effect. He was frank enough to admit that he thought it might kill the measure. Are you going to be made a handle of in this matter? Are you going to allow a handful of men to come up here and get your aid to slaughter this project in that manner? I do not believe it.

Then, as to the question of ballot. I wonder it has not occurred to these gentlemen, — perhaps it has, — that when this bill comes before the people, we have ample authority to vote by ballot, if we see fit. A town meeting is, in this respect, a law unto itself. It comes right down to this: If you pass the bill with these restrictions upon it, you override a principle which has been in successful operation for over a hundred years; you establish a dangerous precedent; you disappoint the town of Brookline; you allow a few disaffected citizens to come up here and effect more, at this brief hearing, than six hundred of their fellow-citizens, who were faithful to their duties at the town meeting, and you ignore entirely the fact that the town of Brookline is perfectly competent to take care of itself, and adopt the ballot if it sees fit. Are the opponents afraid to go to a town meeting of the old-fashioned New England sort, the best test that has ever been devised by human ingenuity for the fair and proper treatment of local questions? Are they afraid to be subjected to such a crucial test as that; and are they trying, in an outside way, to override the will of the majority of their fellow-citizens? I leave it to you, confidently, to set the seal of your disapprobation upon their position, by passing this Act in its entirety, as submitted here by the petitioners, and as approved by everybody except these few objectors.

STATEMENT OF HENRY M. WHITNEY.

Mr. Chairman and Gentlemen:

The selectmen of the town of Brookline and the men who favor this great project of carrying out Commonwealth Avenue, for which the city of Boston and the State of Massachusetts are indebted more, perhaps, to this Legislature thirty years ago than to anybody else,—we, I say, who come up here in support of this measure, have found ourselves placed in a false light. Everybody is agreed that Beacon Street should be widened. There is not a dissenting opinion upon that question in the whole town. Even Edward Atkinson himself, impervious as he is to all argument by his opponents, will concede that; and that is all that the selectmen ask. It is not that you should sit in judgment upon the question whether this avenue shall be 160, 150, or even 70 feet wide. It is whether or not you will, in response to the unanimous request of the town of Brookline, give them leave to treat this county way as if it were a townway. For everybody will admit that if our proposed avenue of 160 feet is not carried, it comes right back to the question: Give us an avenue of 70 feet.

Now, this question of the widening of Beacon Street is not a new question in the town of Brookline. It has been before the County Commissioners and before the town, time and time again, and the only reason why it has not been widened before, is the great expense involved to the town and county in carrying it out. That has, up to this time, defeated any attempt to widen it in the slightest degree. Now, gentlemen come up here and gravely ask you to impose conditions upon the widening of Beacon Street in the town of Brookline that exist upon no other highway in this Commonwealth. Is there any reason why Beacon Street should be placed under any other conditions as to widening than any other street in the town? Are not all the citizens of the town on a perfect equality in respect to that matter as upon

all others? But you are gravely asked to give your sanction to an Act which shall prevent, except by a two-thirds vote of the town, by ballot, any action whatsoever upon that street. Suppose the town of Brookline comes here and asks you to let it treat all the streets in the town that are now county ways, as townways? That would be a perfectly proper and reasonable thing to do, and it is a thing that will ultimately have to be done; and your action upon this question, gentlemen, I trust will be such as will establish a precedent which all future Legislatures can look to. We ask you simply to settle this question on the proper principles of equity and justice. We are not here to try the question before you as to whether this avenue is to be 160 feet wide, or any other width. My own private affairs are not matters of discussion before this committee, excepting in so far as they relate to the subject-matter of this petition. I am perfectly willing that this committee, the Legislature, and everybody else, shall know all there is to be told in reference to that, or anything that I have asked the town of Brookline to do.

Now, what have we heard? What is the opposition? Why, we have heard from our opponents everything under the sun except what applies to the question at issue here. They have not stated one single reason why this application of the town of Brookline should not be granted. Is there any reason why, because this avenue thirty-seven years ago was laid out as a county way and has been treated from that time to this in all respects as a townway, the county never having done anything to it except to establish grades which are admitted to be bad, and ever since 1851 it has been in the possession of the town; the people living upon the line have paid their taxes, the repairs have been made in the usual way, and now you are gravely asked to come in and impose a condition upon Beacon Street that will make it something entirely anomalous in the whole history of this Commonwealth. I say that this petition does not provide for anything else except that the Legislature will permit the town of Brookline to treat Beacon Street in its own way and leave

the town, as every other town in the Commonwealth is left, at liberty to say what they consider necessary for the public good and convenience. What is that? What is private convenience and necessity? Why, it is simply what the individual can afford to have of all the good things in the world that shall add to his pleasure or his comfort. So, indeed, is it with the streets. Give us the democratic doctrine and let the community itself decide how much pleasure and how much comfort they may have in the streets or avenues, and you may leave it in perfect safety for those people to decide.

Now, Mr. Chairman and gentlemen, we did not proceed upon this question of widening Beacon Street without proper advice. When the question was first taken up I went to the chairman of the Board of Selectmen, Mr. Chandler, and I said, "Of all the men in Massachusetts, whose opinion do you regard as the most valuable upon the question of town affairs?" Said he, "Judge Hoar's." "Very well," I said, "I will retain Judge Hoar." I did retain Judge Hoar, and here is his opinion touching this very question :

"To the third question I answer, that in my opinion the selectmen of Brookline can lay out a townway on either side of the existing highway, or partly on one side and partly on the other, in such manner as when built to make practically one street, subject to the approval of the town as in other cases, and may assess betterments or make agreements in relation to compromise, according to the provisions of the Statute."

We proceeded for several months under the advice of Judge Hoar and under the advice of other counsel, and it was not until the very day that the selectmen met to lay out this street that there was any intimation that any further legislation was necessary. When we met at that meeting the counsel of the town hesitated. He said: "This is a *county* way; there may be some question that would endanger the betterments." And we, desiring to treat the town with the utmost fairness in all respects, said: "Mr. Chairman and gentlemen, if you think so, we will wait." And this application to the Legislature is for the interest of the citizens who are not upon the line. It is in order that any property which

may be specially benefited shall bear its part of the burden. It is to insure that the people who live remote from this line and who are interested only in the general tax of the town, shall be saved as much as possible from the expense of this improvement. That is all. It is not because I believe, or have believed, that any further legislation is necessary, but it is in order to make absolutely sure that the interests of the people of the town, and especially of those who live remote from this quarter, shall be protected, that we are asking you for this simple bill, which will give the town of Brookline a right to consider that road as a townway which for thirty-seven years we have in all respects treated as a townway, and not impose restrictions upon this way which are not equally imposed upon every other highway in the town.

Now, Mr. Atkinson comes up here ; and what does he tell you ? Why, he tells you : “ Put it off a year. Turn it over to the next General Court. It will not do you any harm. Put it over to the next General Court.” And he tells you a lot of nonsense. There is not a particle of truth in most of what he tells you. He holds up, as you will remember, the fact that the Lawrences have a great claim in court for land damages, and therefore there is no haste about it. Well, I hold in my hand a notice issued by the Street Commissioners of Boston on the 24th of January, 1887, providing for the laying out of Beacon Street to the Brookline line. Mr. Atkinson speaks of that of which he knows nothing at all. He has assailed the engineers employed by the promoters of this enterprise, and he has undertaken to reflect upon the selectmen of the town in language which I question if he would have dared to use in the town hall of Brookline. Here are these two engineers, men educated as engineers, men of the highest character and integrity, who have made survey after survey of this line, as well as many others in Brookline, and have made the calculations with absolute accuracy, published the quantities, and published the prices for removing the earth,—estimates which cannot be questioned by anybody and which any Board of Selectmen can rely upon with perfect confidence. He undertakes to come

in here and assail the figures which they have given on the cost of construction, on the ground that they are not proper men, and then he has undertaken to reflect upon the character of the Selectmen of Brookline. And why? Simply because they have been unable to resist the logic of events, and like men, when they have investigated a subject as they have this, have had the courage to come forward and do what they have done. I know from my experience that no men ever gave any project more careful investigation, ever devoted more hours to it, and if they have leaned at all, they have leaned in the direction of a larger cost than these very engineers.

Now, Mr. Chairman, this plan has been introduced. I did not intend to say a word as to this "Plan for the widening of Beacon Street" to this committee, for I do not think it is properly a part of this hearing; but as it has been introduced, I desire to say a few words upon it.

I hold in my hand the report of the committee appointed under the Resolves of 1856, Chap. 76, "in relation to land in the Back Bay, and accompanying documents; also, the Fifth Annual Report of the Commissioners on the Back Bay." From '51 to '56 the attention of the Legislature has been repeatedly called to the property of the State in the Back Bay. In their report they say this:

"Four separate Governors, six separate State administrations, a board of commissioners frequently renewed by changes, and lastly, the present committee, selected under circumstances forbidding the possibility of local or partisan bias or prejudice, have all concurred in directing the attention of the Legislature to this property, and recommending that it be surveyed and cherished."

This was the origin, Mr. Chairman and gentlemen, of Commonwealth Avenue, and it appears that this committee and the commissioners had to meet for a long time the prejudices of the city of Boston in laying out this territory.

This report says:

"The territory in question is now a useless and unsightly waste. There is, at the same time, a palpable lack of room for dwelling-houses in and near the city of Boston. Stores are usurping the streets formerly occupied by mansions, rents are enormously high, and it is becoming a

serious problem where the people whose business draws them to the metropolis of New England and the capital of the State shall be accommodated. The Commonwealth's lands in the Back Bay are situated in precisely the most eligible location for dwelling-houses. The conversion of a waste of water into a magnificent system of streets and squares, with dwelling-houses for a numerous population, is a transformation dictated by the soundest statesmanship and the wisest political economy. There are obvious advantages in the execution of this policy, at least in its preliminary stages, by the State rather than by private individuals. If the territory in the Back Bay were exclusively private property it might be 'improved' in accordance with the dictates of a narrow-minded and short-sighted policy, which should seek to secure the most rapid return of money for the least original outlay, without regard to the higher considerations of permanent value and public welfare which the State is bound to cherish."

I desire to leave this document with the committee for examination, because it is a subject with which I, for one, am proud to be connected, and I know that if we can carry out the work of the State begun thirty years ago, you and I and every one of us, if we live thirty years from this time, will look back upon what we have done in furtherance of the project with satisfaction and pleasure.

Now, Mr. Chairman, what was the original plan of the laying out of Commonwealth Avenue? It was proposed to have two or three avenues, but the main avenue was to be 120 feet in width. Under the proper committee new investigations were instituted and it was found desirable to change the width from 120 to 200 feet, and the width between the houses from 160 to 240 feet, and the reasons for it are all given here. I should be very glad to read this entire report to you, for it is full of instruction and inspiration, but I will dwell only upon these particular parts. It goes on to speak of the advantages of widening this avenue to 200 feet, and in order to accomplish the widening of this avenue from 120 to 200 feet, the State actually surrendered twelve acres of land in the full basin as compensation to the Water Power Company for the additional 80 feet on its main avenue.

"After much deliberation,"

— the report goes on to say, —

"the committee determined to lay out the central avenue as broad as a due regard to the width of the other streets and the depths of the lots

would allow; and by a unanimous vote it was decided to make it 200 feet in width, besides reserved spaces of 20 feet in front of the houses on each side, making a total width of 240 feet between the houses."

In order to carry out this magnificent avenue this committee assumed certain obligations for which they made apology and asked the Legislature to ratify them, which it did.

Now, gentlemen, thirty years ago there was not a foot of land west of the Public Garden. It was all, as this committee say, a barren waste, and every foot of filling had to be brought from fifteen to twenty miles away in the country; and yet those gentlemen had the courage to stand there and pay forty cents a square foot for filling. And what was the result? Go there and see for yourselves. Is there any section of the city of Boston, is there any section, indeed, of the State of Massachusetts, which is more creditable to the State, to the city and its citizens, than that very spot? The Institute of Technology was the creation of that movement; the Art Museum, the large block of land for the Public Library and kindred institutions, hundreds of thousands of dollars given to various institutions, and upwards of four millions of dollars poured into the treasury of this Commonwealth,—all these were the results of that magnificent enterprise.

Now, what have we sought to do? Profiting by the example set us by the members of this Legislature thirty years ago, now that the buildings have reached the limit of the avenue (for it was laid out, under the instructions of this committee, simply to the Brookline line)—now that the street is entirely made to its limit, made, indeed, to the forks of the road,—we have undertaken to carry on the work set by the State, two miles and a half farther. There is Commonwealth Avenue, the extreme corner of that map. This plan is not original with us. We started, as gentlemen have said, with the idea of making this extension of Commonwealth Avenue 200 feet in width, but we found that the cost of doing so would be too great.

Now, it has been stated as a reason why this committee should impose additional restrictions upon the laying out of

Beacon Street, that I and my associates did not go to every man who owned land upon the line of the road and tell him what we proposed to do, before buying a foot of it. We did not proceed in that way; the State did not proceed in that way. We proceeded in the only way that it was possible to proceed to make the thing a success, and the only difficulty that we encountered, — and that is the reason why we are here to-day, — was that there were some estates upon the line that could not be bought. The owners are asking for large damages and they are unwilling to pay one single cent of betterments. Desiring to make the expense as light as possible to the town of Brookline, my associates and myself, representing one-half of the land upon the line, have given it to the town, free of all claims for grade damages, and all claims of every name or nature, and have added one-half the cost of construction of the whole line. And yet men come up here and gravely say: “Why shouldn’t you be made to pay the damages that everybody else asks, and the cost of construction besides?” It is charged that the stock that represents our property has advanced in the market. True. We expect it will advance. We expect that the property upon this avenue will do exactly what we have said it will; that it will, by its increased value, pay back to the town of Brookline in taxes, more than the cost of construction. We are not alone in that belief. The venerable chairman of the Board of Assessors, William Lincoln, Esq., at the very first hearing upon this question, came forward and stated that, in his judgment, the increased value of the property upon the line, the moment that it was laid out, would a great deal more than pay the interest upon the whole cost of construction, and that within five years the town would realize \$100,000 income from it. It is not a Utopian dream. There are 600 feet of land on Commonwealth Avenue today that pay as much tax to the city of Boston as the whole two miles and a half of this line. Every single foot of land upon Commonwealth Avenue, from Arlington Street to Dartmouth Street, is taxed at more than \$13 a square foot, and more than \$3000 a running foot. That, mind you, is exclu-

sive of the personal tax, and the personal tax of people who are able to occupy those houses is much more than the real.

Now, how have we proceeded? I am perfectly free to admit that we bought, in the first place, all the land upon the line of Beacon Street that we could buy, at the lowest price at which we could get it. We have paid for it. We bought it in the open market, and paid whatever was necessary to pay, and we were perfectly willing to take our chances upon the whole thing. I say we have offered to give the town over six thousand feet of land, which is one-half the number of feet of land to be taken. And what did we do? We went first and employed Mr. Olmsted, a man who stands second to none in this land for laying out avenues of this kind, whose fame extends from Maine to Mexico; and we paid him for laying out this avenue in as tasteful a manner as he knew how. We placed no restrictions whatsoever upon him. What did we do next? We employed two of the most competent engineers that I know, — or that anybody else, in my judgment, knows, — to make actual surveys upon this land. There is no guess-work about it. Weeks and weeks were spent in making these surveys. For three or four weeks a corps of a dozen men was employed until eleven o'clock at night in making these estimates. There is no guess-work about the whole thing, although it was charged repeatedly here the other day by Mr. Atkinson and others. I say that there are no estimates which cannot be fully relied upon anywhere.

Now, Mr. Chairman and gentlemen, what have we added to this avenue of a democratic character? We have placed in it a railroad track. The only objection that any citizen can make to Commonwealth Avenue is, that it is a place that only the rich can enjoy. We have placed upon this avenue a railroad from one end of the road to the other. That brings it within the ability of men who live within reasonable distance of the avenue to enjoy its blessings in going to and from their business. There are hundreds and thousands of men who will dwell within this region within the next thirty years, whether this avenue is built or not, to

whom the ability to ride back and forth over an avenue of that kind will be a blessing, the value of which it is impossible to overestimate. It will give to the laboring man, the mechanic, the clerk, and to the poor woman, the only opportunity which they may possibly have of looking upon a green tree or green grass from one year's end to the other. I say, that in addition to the increased value of the land, the carrying out of this improvement in the manner which we have proposed is a thing which will bring the greatest good to the greatest number of people.

Now, we hope the Legislature of the State of Massachusetts will impose no restrictions upon this avenue that are not just and proper. We say, that there is no reason why this avenue should be treated any differently from any other avenue in the town of Brookline. We say, that the citizens are competent themselves to decide this question; and we ask you here, in the home of this great improvement, that it shall suffer no detriment; that it shall not go out with the sign of your disapproval in any way, shape or manner, but that you shall, in so far as it is consistent with your constitutional duty, aid in every way the carrying forward of this great enterprise.

Pardon me one moment longer. The city of Boston, as I have shown you, have given notice of their intention to lay out Beacon Street at this end. The cars are now running and filling Beacon Street from the forks of the road to St. Mary's Street. It has been proposed to enlarge the bridge, and it is hoped that it will be done immediately, before the cars are taken off,—the Boston & Albany Railroad having a contract to take their cars off before the first of March. We desire the most prompt action upon this question. It is unfair to ask the city of Boston to lay out this avenue, unless Brookline is to lay out the other end. We believe that this committee, fully understanding this question, will agree with us, and give us prompt and decisive action. And I may say that the town also desires prompt and speedy action.

TESTIMONY OF MR. BAKER, TOWN CLERK.

Q. (By Mr. FAY.) I think you said you had been town clerk for thirty-five years? A. Yes, sir.

Q. During that time, of course, you have been familiar with the proceedings of the officers of the town, the selectmen, in laying out and locating roads, have you not? A. I have.

Q. Will you please state to the committee whether in this particular case they took unusual precaution to advise the town on the subject? A. I should think, from what I know of it, that they took very great care to inform themselves in relation to the matter. They had quite a number of hearings,—several preliminary hearings, and then some two or three formal hearings.

Q. When did they first begin to consider the matter? A. I should think as early as June or July; I do not recollect exactly.

Q. Of last year? A. Yes, sir, of last year.

Q. And when were the meetings held? You mean by meetings, I suppose, meetings open to the public, do you not? A. Yes, sir, meetings in which they invited those who were interested in this matter to appear before them, and give them such information as they desired to obtain.

Q. And how long a period did that cover? A. As I have it in my mind, I think the first meeting was held sometime in July.

Q. And you say there were several of those meetings prior to the town meeting which we have spoken about here so often? A. Yes, sir.

Q. How often do the selectmen hold their regular meetings? A. Twice a week.

Q. When you speak of the meetings which were held, you do not refer to these meetings, do you? A. Meetings in which this special matter was up for consideration, to which they invited people to come and appear before them, and give their views in relation to the matter, either for or against.

Q. Those meetings were notified publicly, were they not?
A. They were.

Q. So, if I understand you correctly, ever since last July the selectmen have been holding at intervals public meetings, at which any citizen had an opportunity to be heard upon this matter, either for or against; am I correct? A. That is what I mean; yes, sir.

Q. Now, I want to ask you what precautions they took when they held the town meeting of the 20th of December, which is the meeting that we have spoken of, the meeting which authorized this petition? A. They pursued the usual course. They issued their warrant, a copy of which I have put into the hands of the committee, and also gave a report upon the articles in the warrant stating their views, which I have also placed in the hands of the committee. This was distributed to every house in town four days before the town meeting. When the meeting was held, every person was supposed to have had complete and full notice of the meeting, and of the objects of the meeting.

Q. Has it not often been the case in town meetings that the meetings themselves have voted to adopt the ballot upon certain questions? A. Yes, sir.

Q. That course is open, of course, in the future as it has been in the past? A. I consider it entirely competent for the town meeting to devise any measure by which they will be governed during that meeting, either in voting or otherwise.

Q. From your long experience in these matters,—and I may add, gentlemen of the committee, that Mr. Baker has had legislative experience as well,—are you familiar with any precedent for such legislation as is sought here by the amendment proposed? That is, *where a town has voted unanimously to petition the Legislature for a certain Act, the Legislature has passed the Act with an amendment requiring a two-thirds vote, by ballot, before the town can have what it has asked for?* A. I do not know of any such case.

Q. Have you ever heard of any such case in any other part of the Commonwealth? A. I never have; no, sir.

TESTIMONY OF CHARLES U. COTTING.

Q. (By Mr. FAY.) You are a resident of Brookline?
A. Yes.

Q. What is your occupation? A. Manager of real estate.

Q. You have had a large experience in that line, have you not, sir? A. Yes.

Q. You have managed a great deal of property in the city and in Brookline, I believe? A. Yes.

Q. How long have you lived in Brookline? A. Forty-five years.

Q. Are you familiar with this so-called Beacon Street improvement? A. Yes.

Q. Speaking as a citizen of the town, do you feel that any information has been withheld from the citizens by the selectmen, acting for the town? A. As far as I know, and I think I do know, the town have full information in regard to it. I attended two or three hearings myself, and I attended the last town meeting at which the question, which I understand will come before you to-day, was voted upon. I think the parties whom I directly represent pay taxes on somewhere from a million to a million and a half of dollars, — that is a wide margin, I know, but I state it within bounds, — in the town, and therefore I feel that they have a direct interest in the town, and a direct interest in any expenditures which the town may make. I have considered this matter widely, and I think it is a wise movement for the town to make, or for the town to be authorized to make.

Q. Is it not for the interest of Boston as well? A. There is no question about it in my mind, although I was only looking at it from the standpoint of Brookline. I think it is decidedly for the interest of Boston.

Q. Are you aware that the city of Boston has already issued notice of their intention to widen the Boston end of this street? A. I saw it in the newspaper yesterday morning.

Q. (By Mr. HYDE.) Do the people whom you represent own property bordering on the line of this proposed improvement? A. Yes, sir; nearly all of them.

Q. And have they relinquished a portion of their land to the town by written releases, for the purpose of this improvement, if the town shall undertake it? A. They have. In my own case, I have given twenty per cent of my land which borders on this street, for the benefit of this improvement, because I believe it will be an improvement. Of course, in giving my own land, I look at it from simply a selfish view.

Q. Now, supposing this project should be given up for the present is it probable that so large an amount of land could again be brought together to be given to the town, as has already been secured? A. I do not believe it could, sir. It was with a great deal of difficulty I could get my own people to agree, they were so scattered. Of course, before I could give their land, I had to consult with them, and it was with great difficulty I could reach them all so as to obtain their consent. I know in my own circle it would be very difficult to do it again.

Q. Are any of your people on this avenue interested in the West End Land Company? A. Not a dollar, sir. They have not a dollar of interest, and I have not, directly or indirectly. My only interest is as a citizen of Brookline, as you know.

Q. (By Mr. FAY.) I ask you now, as an expert in real estate, familiar with town matters, is it not fair to assume that it would cost as much for the town to widen this street to one hundred feet, without the aid that is given by this company and the interests it represents, as it would to widen under the proposed plan to one hundred and sixty feet? A. I do not think there is any doubt of that. If I understand your question, it is, supposing the town should issue the ordinary order of notice that they were to widen the street to a hundred feet, and make the best bargain they could, and go on and do it, which would cost the more, to do that or to widen it to one hundred and sixty feet under the present plan? Is that the question?

Q. That is it. A. I think the advantage would be in favor of the widening to one hundred and sixty feet, because there has been so much land contributed.

Q. (By Mr. HYDE.) One single question more, Mr. Cotting. I may say to the committee, that I suppose those of us who know Mr. Cotting, will agree that there is no man in Boston who has a larger experience in real estate matters, or whose judgment would be regarded as based upon more experience than his would be. What do you think, if this improvement is carried through, taking the town as a whole, as to whether or not it will be a benefit to the town to have the improvement made? A. I think the general benefit will be for the town.

Q. (By the COMMITTEE.) Is this land that is to be contributed by the land holders, to be contributed on condition the street shall be one hundred and sixty feet wide? A. I have not seen the other releases, but the release of the land which I represent is based upon the street being widened to one hundred and sixty feet.

Q. Otherwise than that, the land would not be contributed? A. The land would not be contributed. And more than that, the town has only until the first of July, — somebody will correct me if I am wrong; July 1st, I think, is the limit. One of the parties who signed a release has already gone abroad, and I know it would be very difficult to get his consent again.

Q. (By Mr. HYDE.) Would you want to undertake, if this was not taken advantage of by the town by the 1st of July, to get your releases renewed? A. No, sir.

Q. (By Mr. FAY.) You are in favor, then, of the utmost promptness of action? A. I am. As I understand the question, it is, whether the town shall be authorized to consider this question. I think the quicker it is done the better; and if the town decides it does not want to do it, it can so vote, and the matter can be settled one way or the other.

Q. In your judgment, is not the town the proper party to consider this question on its merits (after it has the

right to do so), without going to anybody else? A. I do not know as I understand correctly, unless gentlemen propose to put the town under guardianship, and have somebody else decide for her.

Mr. FAY. That is the suggestion I made yesterday; that if the amendment were adopted, I should apply for a general act of guardianship.

Mr. COTTING. I do not know exactly what the question is; but if you ask me whether I think the town meetings in Brookline are up to the average of town meetings throughout the State, I should say, decidedly, they were; and the citizens are fully competent, I think, to decide any question for themselves. I never knew anything to be so hurried through the town meeting, that it was not sifted to the bottom before it got through, and that the citizens did not act understandingly upon it. The question of the introduction of water was one involving a very heavy expense; that was thoroughly considered, and it was a very wise move. The next large expenditure we made was for sewers, and that was a very wise move. I do not believe you could get one-tenth of the people to put themselves back again, even if they could. And I do not think there is any question which the citizens of Brookline are not competent to decide for themselves. All of the people are intelligent, and I think the people are capable of deciding this question in town meeting.

TESTIMONY OF WILLIAM LINCOLN.

Q. (By Mr. FAY.) You are an officer of the town of Brookline, are you not? A. Yes, sir.

Q. What office do you hold? A. I am chairman of the Board of Assessors.

Q. How long have you been on the Board of Assessors? A. Fifteen years.

Q. How long have you lived in Brookline? A. Thirty-five years.

Q. State whether or not you are familiar with this Beacon Street improvement project, with the localities and with the general plan proposed? A. I think I am, sir.

Q. What is your judgment in regard to it; whether or not you think the Act which is asked for should be granted?

A. I should take up two or three points in answering that question, if you would allow me.

Q. Please go on in your own way, and state briefly and pointedly to the committee what you think as to the whole subject. A. As to what makes this particularly desirable for the town of Brookline at the present time, I think the thing to be kept in view at all times is that the value of this improvement depends largely, and almost wholly, upon the style with which it is carried out. The plan which is proposed by this syndicate of gentlemen meets my views as likely to accomplish the great object that is desired. By the construction of this beautiful avenue, adapted to the uses of a city of 400,000 inhabitants at one end and a charming place of suburban residence three miles away at the other end, the population of the city will be drawn out along the line of this road, and this will secure the occupation and development of all the adjacent lands for valuable estates, and will very much enhance the value of the property.

Q. Passing, if you please, to the practical cost of construction under this plan, can you give the committee any information as to the comparative cost under this arrangement, with the assistance rendered by this syndicate, and the cost of widening without any such assistance? A. Well, sir, I suppose the gentlemen of the committee are as competent in every respect, perhaps, except as to their knowledge of the value of the land, to answer that question as I am. But in my judgment it would cost the town of Brookline less to carry out this plan as presented by these gentlemen, than it would to widen the street to a hundred feet, and undergo all the difficulties which they would have to undergo when all these advantages have been cast aside, and they would have to construct the road the best way they could.

Q. So that, in your judgment, the town will get sixty additional feet of width under this plan at no greater cost

than it would have to pay to widen to one hundred feet?

A. That is my judgment. Another very important point which should be kept in mind here, is that the value of the adjoining estates will not be enhanced greatly by the widening to a hundred feet. An avenue one hundred feet wide will not be such an avenue as is proposed by this plan. It will not be the attractive avenue which will give the value to the adjoining lands that will be given if this plan is carried out. That, I think, is a very important matter, because I think the enhanced value of the real estate on the line of this road will more than pay for the whole of the expense, to say nothing about the addition of personal estate to the town of Brookline which will be liable to taxation.

Q. What effect do you think it will have upon the taxes of the town? A. I think it will furnish the town with taxable property to such an extent that it will diminish the rate of taxation on the rest of the property in the town, and be of great benefit to all the inhabitants.

Q. You are heartily in favor, then, of the project, are you? A. I am very heartily in favor of it, indeed.

Q. So far as you know, what is the general sentiment of the town? A. I should think the general sentiment of the town was strongly in favor of it.

TESTIMONY OF SULLIVAN COOLIDGE.

Q. (By Mr. FAY.) You are a resident of Brookline?

A. Yes, sir.

Q. How long have you lived there? A. Most seventy years.

Q. And your occupation is what? A. It has been farming.

Q. Are you familiar with Beacon Street, its locality and so on? A. I am, sir.

Q. Are you familiar with the projected improvement of Beacon Street? A. I am, in some sense.

Q. You know it is proposed to widen it to one hundred and sixty feet? A. I know that is the proposition now.

Q. In your judgment as a long, and I assume a life-long, resident of Brookline, whether or not this is an expedient and economical project for the town to embark upon? A. We consider it so; very much so.

Q. It is extremely desirable, you think? A. I do, very.

Q. How about the cost of it; do you think it will pay for itself? A. I do not know as it would cost a great deal more to widen it out to one hundred and sixty feet than it would to one hundred feet.

Q. That is, you mean, on account of the gifts of land from the Land Company and others? A. Yes, sir. And then, having the railroad separate from the travelled part of the street, I think, will enhance the value of the property very much. We know that railroads are a great benefit, but they are a great nuisance for us who have teams, and have to drive over them.

Q. So that the plan of shading the tracks, and at the same time protecting the roadway, is, in your judgment, an excellent feature of this project? A. Yes, sir.

Mr. FAY. That is a point, I may remark, gentlemen, which possibly has not been brought out, as yet, and it explains, perhaps, the "park" theory of certain remonstrants. "Planting spaces" are to be put on each side of the street railway track. That will be a great advantage, because when the trees are there it will render the railroad cars themselves less obtrusive, less unsightly, and it will also be a protection and a safeguard against runaway horses, or anything of that kind; and it will also add very materially to the beauty of the street, without turning it into a park, but simply leaving it as a highway treated in a novel shape. That is what the witness refers to. I have not asked the previous witnesses anything in regard to this, but as they have all said they heartily approve the plan, I assume they approve that feature of it.

TESTIMONY OF PHILIP S. ALLEN.

Q. (By Mr. FAY.) Are you a native of Brookline? A. I have lived there thirty-seven years.

Q. You are familiar with the cost of the construction of streets? A. Yes, sir.

Q. May I ask what your occupation is? A. Contractor.

Q. Have you examined the estimates for the proposed construction of Beacon Street? A. Yes, sir. I had a schedule of the quantities required in all parts of this construction and I carried out the cost beside each item, and gave it to the engineers to make their estimates, with other contractors who did the same, as I was told.

Q. Have you examined the estimates which have been made by Messrs. Aspinwall and Lincoln? A. I have, sir.

Q. Whether or not in your judgment they are conservative and safe estimates? A. I think they are. The estimate I made at the time was on a 200-foot avenue, which is more, of course, than the cost of constructing a 160-foot avenue.

Mr. FAY. I may state here, gentlemen, perhaps with propriety, that the original plan of the West End Land Company was to make this avenue 200 feet wide, and afterwards, at the request or suggestion of the town, through its selectmen, they modified the plan to 160 feet.

Q. You made your estimates on the basis of a 200-foot street? A. Yes, sir; and I only estimated for the quantities presented by the engineers.

Q. You say you have lived in Brookline for thirty-seven years; state whether or not this matter has been fairly and squarely brought before the town; whether there has been any neglect of duty on the part of the petitioners, or whether there has been any information withheld to which the town was entitled, in your judgment? A. I should not say there had been anything withheld. I think the people have had full liberty to investigate, and they have had all the opportunity they could ask for to look into this matter.

Q. What is the sentiment of the town in regard to it, so far as you know? A. Well, I am over all parts of the town, and it is rarely I meet a person who is opposed to this scheme. There may be some individual who owns a place on the line, who wants to get all the award he can, or who does not want to have to remove from where he lives, and there may be a few others, but it is very rarely that I meet one.

Q. The general sentiment is in favor of it? A. Yes, sir.

Mr. FAY (to the Committee). When I ask that question, as I have asked it of several witnesses, I mean, of course, with proper limitations as to expense. That is something we will decide after you give us the Act. We do not go for it at any price, but we go for it at a proper price.

TESTIMONY OF HON. JOHN W. CANDLER.

Q. (By Mr. FAY.) You are an old resident of Brookline? A. Yes, sir.

Q. How long have you lived there? A. About thirty-eight years.

Q. During that time you have held several official positions, have you not? A. Yes, sir.

Q. You have represented the town here in the Legislature, and in Washington? A. Yes, sir.

Q. You have had more or less familiarity, I presume, with the laying out and construction of townways? A. Yes, sir.

Q. Have you given any attention to the subject of the Beacon Street improvement,—to the proposed construction of the avenue? A. Yes, sir.

Q. What means of information have you had, as a citizen of the town, to familiarize yourself with this project? A. I have read the reports very carefully.

Q. What reports do you refer to, sir? A. Everything that has been published that I could see.

Q. There has been a good deal published, has there not?

A. Yes, sir.

Q. The discussion of this matter has occupied several months, has it not, as stated by Mr. Baker? A. Yes, sir.

Q. Is there anything else in your judgment, as a citizen of the town, and as an ex-official of the town, which the selectmen could do, in order to throw more light upon this project, before the town votes upon the acceptance of the Act?

A. I should think it was not necessary to discuss it further. Of course, that is a matter which individuals will make up their own opinions about. So far as I am concerned, I am satisfied.

Q. I am not speaking, understand me, about the discussion on the merits of the project, but I am speaking now of the preliminary work which is required or needful to be done; whether the town officials have, to your knowledge, neglected their duty in any respect? A. I think it has been very carefully done. I think there has been more attention paid to this than to any important measure that I remember which has been brought before the town.

Q. Has there not been a good deal of discussion of this subject in the two local newspapers of the town? A. I have noticed a good deal of discussion, and I have heard it generally discussed by the people. I do not know that I recall any special discussion in the papers, but I have read articles in the papers in regard to it.

Q. Have you any interest in this matter, except that of a citizen? A. A general interest; I am a property holder in the town.

Q. None of your real estate touches this street in any part? A. Nothing of my own.

Q. (By Mr. HYDE.) I should like to have you state in your own way,—you generally have some views upon matters in your own town,—what you think of the whole matter, and what its benefit will or will not be? A. I have looked at it in a general way, Mr. Chairman. I have been very much interested in the laying out of avenues in Brookline. That has been the one thing that Boston and Brook-

line have neglected for 25 years. We have had no proper direct communication between Boston and Brookline. For a great many years we have gone through Roxbury in the horse cars to Boston, and we have had the Milldam, which is at an angle the other way, which we could drive over, but there has been no direct communication with Brookline, either by private conveyance or by horse railways. Twenty years ago I advocated in the Legislature the laying out of a direct avenue to Brookline, — the extension of Boylston Street. I felt it was very important that we should have a line of horse cars to accommodate the masses of the people with more rapid transit than we then had, and at lower prices, and I got through the Legislature, twenty years ago, a charter for a horse railway upon the extension of Boylston Street. It would have been a wise thing for the State and the city and the town, and it would greatly have increased the value of property, if that thing had been carried through twenty years ago. Feeling an interest, as I do, in everything that is of interest to the town of Brookline and to Boston, when this project came up, which is now before you, although I had no personal interest in it whatever, I examined it, and I thought it was an admirable scheme. The more I looked at it, the better I was impressed with it. I hope the men who are in it will make some money. You cannot get capital, which is conservative, to take hold of any enterprise unless there is some prospect of a return from it, and I hope these men will make some money out of this. But at the same time I am satisfied, as a citizen of the town, that the town will be very much benefited, if the project can be carried out, as I hope it will be. My views, you see, are general. I insist upon it that the city of Boston, the authorities, and the influential men in Brookline, have not been alive to the necessities and the demands of the two localities in this direction. The growth of Boston is towards Brookline, and years ago straight avenues and means of communication should have been laid out between the town and the city. There is no reason why the rich man, if he wants to build his house at this end of

Commonwealth Avenue, should not do so, but it is a good plan, also, to lay the avenue out so that the poor man shall be able to have quick transit, and be able to have a house, which shall be accessible, at the other end of the avenue. I was so well satisfied that this was a wise thing for the benefit of the people, that I have looked into it with more care than I ordinarily should, and on general principles I am very strongly in favor of it. I hope facilities will be extended, so that everything can be done in a legal and proper and conservative way.

Q. (By Mr. FAY.) In your judgment, what would be the effect of carrying out this improvement, on the taxes in Brookline? A. I think it would have an effect, on the whole, to reduce taxation. I base my approval of it on general principles. I say that no avenue that is called for is ever laid out in a city or town, but what it promotes the growth of the town; and no rapid transit can be extended into the suburbs of a city without benefiting the town by increasing the value of the taxable property. There was a great deal of opposition to the parks, but if you will look into the statistics, as I have done, you will find that they have been of great benefit.

Q. You refer to the system of parks in Boston? A. I do.

Q. Has it not been the uniform experience, Mr. Candler, that the extension of avenues with horse railroads upon them, has developed and improved the property abutting on the avenues? A. Certainly.

TESTIMONY OF HON. WILLIAM ASPINWALL.

Q. (By Mr. FAY.) You are a resident of Brookline? A. Yes, sir.

Q. How long have you lived there? A. I have lived there a part of every year for 53 years, and I have been a voter and tax-payer there for 40 years.

Q. During that time you have held several positions, have you not, in the town? A. Yes, sir; I have been town clerk, selectman and assessor. I believe the only office I now hold is trustee of the Public Library, which office I have held for about twenty-five years.

Q. You were at one time Senator from that district, were you not? A. I represented the town twice in the Legislature, in 1851 and 1852, and the County of Norfolk under the old constitution, in 1854.

Q. So that, practically, you have held almost every office within the gift of the town. Is not that so, sir? A. Yes, sir; all but school committee; I never was on the school committee.

Q. State whether or not, during your residence in Brookline, you have been more or less actively interested in town matters? A. Yes, sir; I have always considered, since I became a voter in Brookline, that it was my duty to attend the town meetings, and I have done so whenever I was physically able. Sometimes I have been unwell and not able to go, but I have considered it a duty to myself and a duty I owed to others, to attend.

Q. Now, Mr. Aspinwall, in your large experience both as town official and as a citizen voting at town meetings, please state whether or not you have ever heard of any legislation such as is proposed here by this amendment; that is, requiring a two-thirds vote, by ballot, for the acceptance of an Act which is petitioned for unanimously by the citizens in a town meeting? A. I never heard of any such legislation, and I never heard of any such proposition for legislation before.

Q. Were you present at this meeting of December 20th? A. Yes, sir.

Q. When the vote asking for this Act was passed? A. I was present; I took part in the discussion, and made a few remarks.

Q. Whether or not the subject was pretty thoroughly discussed at that time? A. Very thoroughly indeed. I never heard a subject more thoroughly discussed, although most

of the discussion was entirely outside of the article in the warrant.

Q. What was the object of the meeting? A. The object of the meeting was to consider this very proposition, as to whether the town would instruct the selectmen to petition the Legislature for substantially this Act.

Q. And, after this long discussion, what did the meeting do; I mean, with regard to authorizing this to be done? A. The vote was passed, as has been read to the committee, almost unanimously; in fact, I may say substantially unanimously; and I believe it has been so stated here by the opponents.

Q. Did you hear anybody vote against it at the time? A. No, sir; I do not recollect any vote against it.

Q. What knowledge had you of this matter prior to the meeting; how had it been brought to your attention? A. You mean, of the widening of Beacon Street?

Q. Yes. A. The widening of Beacon Street is a matter which has been in my mind for a number of years, and in the minds of a good many other persons. Three or four years ago, perhaps it is, I got up a petition, addressed to the county commissioners, to widen Beacon Street, and there was a hearing upon it. The opposition we had at that time was precisely the opposition we have here. The Stearns family opposed it, as they opposed the laying out of Beacon Street thirty years ago, on the ground that it was going to damage their property, when, in fact, it rendered it ten times as valuable as it was before. They got damages at that time, and they always get damages.

Q. Mr. Stearns is the gentleman who was so ably misrepresented here by his attorney, the other day? A. Yes, sir.

Q. He lives on the line of the street? A. Yes, sir. These gentlemen, I believe, certainly those whose names I have seen upon the petition to be presented by Mr. White, are substantially the opponents of this scheme; and I may say, further, that they are the constant opponents of any scheme of public improvement which is going to increase, as

they think, their taxes. I noticed the names for the first time this morning; and I noticed the names of a great many persons who never attend a town meeting, except to vote against an appropriation of money for the public good.

Q. Is it not a fact that some of the gentlemen who were at first opposed to this project at the preliminary meetings in the lower town hall, afterwards became convinced that the project was a good one, and favored it in the upper town hall at the subsequent meeting? A. Yes, I think so. I think Mr. Foster was opposed to it at first, and afterwards he made one of the best speeches there was made in favor of it, as one of the best business men of Boston, and respected in that way in the town of Brookline. I do not remember who else spoke in that meeting, but there was quite a number.

Q. I do not care to go quite so much into detail as that. My purpose, Mr. Aspinwall, and I will say so for the benefit of the committee also, is to show that frequent meetings were held and that the selectmen not only neglected no usual opportunity and precaution to bring this before the town, but took unusual care in the matter. Following out this line a little further, Mr. Aspinwall, will you state whether or not they had any plans and estimates and specifications at these preliminary hearings? A. Yes, sir, they did.

Q. For the enlightenment of the citizens? A. At all the meetings which were held by the selectmen, they had the plans and specifications, and had the engineers present, so that any questions could be put to them, and there was a very thorough examination of the matter. I would say I do not know any matter that has ever been before the town of Brookline, with the exception of the water question, that has ever been so thoroughly ventilated as this has been. The two papers in Brookline and some of the Boston papers have had articles upon it and reports of the hearings, and it is impossible that anything could be more generally discussed than this matter has been. It has been discussed in every possible way, on the cars, on the streets, and wherever the people have met.

Q. (By Mr. HYDE.) From having lived in the town all these years, and probably knowing the people of the town as well as any man there, will you state in a general way, your opinion of whether this is a desirable thing for the town to do? A. I have no question about that, sir. It is a desirable thing for the town, taking the town by itself, and it is a desirable thing for the great community of which the town forms a part. Practically, the town of Brookline is part of the metropolis of the State, part of the city of Boston. It is enclosed by the city of Boston almost entirely, with the exception of a small boundary on the city of Newton, and within 25 years it will be almost impossible, if such an avenue as this is laid out, to distinguish where Boston begins and Brookline ends. We who live in Brookline are all Boston people, really. We sleep in Brookline, but all our business is in Boston, and the interests of Brookline and those of Boston are identical. Everybody knows how much the interests of Boston are concerned in this matter. Indeed, it seems to me there has rarely been a matter before the public, the outcome of which may be made so beneficial to the metropolis of the State, and even to the State itself. I do not think anybody doubts that if this territory had been a part of the Back Bay territory, in the same condition that that was in, in 1857, the State would not have terminated Commonwealth Avenue where it did. I have no doubt that within five years after this road is laid out, it will be continued by the city of Newton to Newton Centre, and perhaps further towards Worcester. It may even be carried on to Worcester, with the hope of making that city the capital of the Commonwealth. (Laughter.)

Q. (By Mr. FAY.) Have you any personal interest in this matter, other than as a citizen? A. None at all. If I had any personal interest, as I stated, I think, in the town meeting or before the selectmen, it would be rather adverse to this matter. I am interested in real estate in Brookline not on this avenue. That real estate is in the market for sale, and I think that my friend Whitney, having so large an amount of land on what will be Commonwealth Avenue ex-

tended, will bring property into competition with what I have already for sale, and I think, perhaps, the property which I am now selling will not sell quite so quickly as it otherwise would.

Q. Do you not think that, while it benefits him, it will also benefit your property in the end? A. I have no doubt it will benefit all the property in the town of Brookline. I have no doubt it will act favorably on all the property in the town. But I was speaking of special benefit, and, perhaps, of special injury.

Q. You live at some distance from the street? A. I live a half a mile, I should say, from Beacon Street.

Q. You have had large experience in these matters; will you please give the committee the benefit of your judgment as to the practical value of voting by ballot? A. I do not see any value at all, so far as the community is concerned. I consider it merely an opportunity given to the minority to defeat this scheme. That is undoubtedly the object they have in view. They think they can manage to get one-third of the votes, or a little over one-third, perhaps, in opposition to it, and in that way can defeat the wishes of the other two-thirds of the town. I do not believe in that way of conducting business in a town or anywhere else, unless in special cases. It may be necessary sometime to put a control upon the borrowing power of a town, and I think the Legislature has been wise in that respect. But for general purposes I think the majority ought to rule, and especially a majority in a town meeting. I do not believe in putting it into the power of people who do not come to town meetings usually, to come there on some special occasion, with their minds made up and their ballots in their pockets, to vote against the opinions that have been formed by other citizens, upon full discussion of the question face to face.

Q. Is it not possible that the use of the ballot puts a premium upon "stay-at-homes," the people who do not come to town meetings? A. Certainly; that is the way it has always operated.

Q. Have you not in your experience known the town to resort to the use of the ballot, by its own act, in town meetings? A. I remember two cases. One was on the extension of Harrison Place. Some years ago they had a ballot on that question, and my belief is that what was the public good was at that time defeated by the votes of people who came to the meeting without knowing anything about the question, but with their minds made up to vote in a certain way. Then, again, on the water question, in 1872, the town decided to take a vote by ballot. Prior to that time the town had repeatedly expressed itself in town meeting in favor of introducing water. It had applied to the Legislature, and had obtained an Act for introducing the Charles River water. But, by a great effort on the part of the opponents to the introduction of water, they defeated, by a small majority, the friends of the measure. In less than six months afterwards, the town voted to introduce water, however, and within a year after that, water was introduced; and we have the best water in the Commonwealth of Massachusetts, I think. The ballot operated to delay the introduction of water, which was an absolute necessity to the poorer classes of our people.

Q. Voting by ballot in those two cases you have stated worked very unfavorably? A. It undoubtedly defeated the popular will.

Q. Whether or not, in your judgment, it is wiser to leave the question of the ballot to the meeting of the citizens, who ask for this Act, than it is to try to forestall that action by the adoption of this amendment, or of any of these amendments? A. I think it is perfectly safe to leave it with the town. In one of the cases I have spoken of, — that relating to Harrison Place, — the town did not vote to take the vote by ballot; but the selectmen, in their warrant, called the citizens to deposit their ballots on that question. The selectmen could do it in this case, if they saw fit, and the town could vote by ballot.

Q. Then, I will modify my question. Is it not perfectly safe, in your opinion, to leave the interests of these remon-

strants in the hands of the selectmen, as has been done before? A. It seems to me perfectly safe, sir.

Q. What, in your judgment, would be the attitude of the Legislature towards the citizens of Brookline, who petition unanimously for this Act, if it should pass an Act requiring them to give a two-thirds vote, by ballot, in its favor, before they can avail themselves of it? A. It seems to me it would be treating the town of Brookline very differently from the way they treat any other town or city in the Commonwealth; that it would, substantially, be saying that the town of Brookline was not competent to take care of its affairs, and that it had a large body of irresponsible individuals who were ready to vote away money for any purpose, — especially for something that was likely to be of some personal benefit to themselves.

Q. Whether or not, Mr. Aspinwall, it might not follow, as a further inference, that the Legislature paid heed only to the few remonstrants who came up here, and ignored the deliberate action and the unanimous vote of the citizens in town meeting assembled? A. I should so look upon it; and I think the people of Brookline would so look upon it.

Q. (By the CHAIRMAN.) I believe you said you usually attend the town meetings? A. Yes.

Q. It has been testified here that there were 600 voters at this meeting on Dec. 20th; how does that compare with your average town meeting? A. It was much larger than usual. We very seldom have a meeting, I should say, where the attendance is over half that number. Even our annual meetings are scarcely ever as large as this meeting was.

Q. As an old resident of Brookline, and one who usually attends the town meetings, do you, in your judgment, think there was a sufficient notice given of this meeting of December 20th, so that the town's people could have come if they had seen fit to? A. There is no doubt about that. The meeting had been talked about a long time, or quite a considerable time, before the warrant was issued, and according to our by-law, the warrant must be fully served at least four days before the meeting is held. It was actually served, I should say, nearer seven days before.

Q. It has been intimated here, or it has been testified to here, that there are two hundred and fifty or three hundred citizens of Brookline who only pay a poll-tax. I would like to ask, for my own benefit and for the benefit of the committee, whether the larger proportion of that six hundred at the meeting were poll-tax payers or property-tax payers? A. Allow me in the first place, Mr. Chairman, to correct the statement that has been made, that there are two hundred and fifty or three hundred poll-tax payers only in the town of Brookline. The majority of the tax payers in Brookline are poll-tax payers. But who are they? They are not simply the laboring people. They are the sons of men who own property, and they are clerks who, perhaps, have no personal property in the town of Brookline, and hire houses, for which they pay rent, but do not pay taxes, except in the way of rent. These are a very large proportion of the people who are down on our list as poll-tax payers, simply. Many of them are men who pay taxes in the city of Boston on their business, and they are the sons of men of property, although not owning property themselves. Then there are the people who own nothing at all, who pay no tax in any way, the laboring population, the journeyman mechanics, and so on, but they are a very small proportion of the whole number of merely poll-tax payers.

Q. (By Mr. FAY.) How did that meeting compare with the average town meetings, in respect to intelligence and financial responsibility, if I may use those expressions without offence? A. I should say the representation of those who pay a tax on property, and their representatives in the sons of such gentlemen, was much larger than usual. There was, of course, a large number of the poorer class of people present. But I want to say this for the poorer class of people in Brookline: I believe they are just as safe to trust with such questions as this as the rich men, and more. I think they are more public spirited, as a rule, than the rich men, who, as a general rule, look more closely to their tax bills than any other class in the community does. The middle class in Brookline, and the laboring class in Brookline, the

mechanics and the laboring men, are quite as safe to be trusted with the interests of the town as the rich men are, and for this reason especially, that they do attend the town meetings, while the rich men do not, but make up their minds outside.

Q. (By the COMMITTEE.) Do you think there is any proportion of the citizens of Brookline who would attend the town meetings and vote for that measure in consideration of the work they would get out of it? A. No, sir, I do not think so. There may be a few men who would, but after all, what is that? They have a selfish motive, just as other men will vote on the other side for a selfish motive. One man will vote against a measure because it is going to make him pay fifty cents more tax, and the other man will vote in favor of it because it is going to put fifty cents into his pocket. It is selfishness on either side.

Q. My question is, whether there is any considerable proportion of such men who are merely poll-tax payers?

A. No, I do not think there is any considerable number of people who are actuated by any such motives.

Q. I believe a gentleman who testified yesterday, Mr. Rice, gave an estimate that there were 250 of that class. What do you say to that? A. I have lived in the town of Brookline fifty years, and Mr. Rice has not lived there fifty months. Perhaps he knows better about the people of Brookline than I do, but I should trust my own opinion sooner than I would his.

Q. (By Mr. FAX.) Now we are on that line of inquiry, I want to ask you a question or two concerning Mr. Rice's statements here. You saw him at the town meeting, and sat near him? A. Yes, sir, not very far from him.

Q. Whether, in your judgment, he had any following whatever in his line of tactics? I believe he did not formulate any motion; but whether there was anybody who seemed to sympathize with him or follow him in what he said? Did he have any influence? A. None at all, sir. I think his proposition fell as cold upon the meeting as anything I ever heard. Town meetings have a way of expressing their feeling without an actual vote, and I never saw any proposition

treated with more silent contempt than that was. Everybody supposed,—of course Mr. Rice set that at rest the other day,—that he represented the Metropolitan Railroad Company there, and that he was making a proposition for their benefit. That is what everybody said at the time, and what everybody has said since, until he contradicted it.

Q. Whether your judgment differs from his as to the amount of weight his proposition carried? A. Entirely, sir.

Q. (By Mr. HYDE.) The question the chairman asked you has not been directly answered yet, I think, whether there was a larger proportion of men at the meeting, who only pay a poll-tax, than is usually at the town meetings; what do you say as to that?

The CHAIRMAN. I mean simply, poll-tax payers, who pay nothing else and represent nothing else. A. I should say there was a larger proportion of property represented there than usual. Of course there was, if that is so, a less proportion of people who merely pay a poll-tax.

Q. (By the COMMITTEE.) Is there an element of your citizenship who generally, outside of this particular project, attend your meetings and vote for measures in consideration of the work they can get out of them? A. No, sir; I do not think there is any considerable number of our people who take such a view of questions. I think our laboring population, I speak now of mechanics and day-laborers, are quite as well informed upon public affairs as any class in the community. They discuss them more, and I think they perform their duties as citizens better, because they do attend the town meetings. Some vote one way and some another, and I do not believe they vote simply from the idea that they are going to make a dollar or two, or ten dollars, or something of that kind out of a job.

Q. The reason I ask the question is, that somebody stated yesterday there was a large influx of laboring men, owing to the public works of the town, and that they were always ready to vote in consideration of the work they got; and when he was asked how many such men there were, he stated there were about two hundred and fifty. What do you say as to that?

The CHAIRMAN. That was the statement of Mr. Rice.

A. I am not familiar with the details of town affairs now ; that is, as to the number of laborers employed ; but I should be astonished beyond measure if it was proved to me that there was anything like that number of men employed upon the public works in Brookline. (Mr. James, one of the selectmen, “ Not half ! ”) I do not think it is possible. I do not see why the magnitude of the expenditure involved in this case is any reason for adopting a different mode of procedure than is common in the conduct of the town affairs. I think, if the town is capable of conducting any of its affairs by a majority, it is fit to conduct all its affairs by a majority, except where the State has made a general law, as it has in regard to municipal indebtedness, which I think is a wise provision. But that applies generally. It is not made to apply to a particular town. I think that special legislation against the Democratic-Republican doctrine that a majority shall rule in town affairs, is decidedly inexpedient.

Q. (By Mr. FAY.) One question I omitted, which I will ask, with the permission of the committee. Is this a townway, or a parkway? A. It is a townway.

Q. It is a road, is it not? A. It is a road.

Q. And, therefore, it ought to be treated like one in laying it out? A. Yes, sir.

Q. I would like to ask whether you consider that the town of Brookline will be benefited as a town, — not the individuals who own property where this road will be, if this plan is carried out, — but whether the town in general will be benefited in proportion to the expenditure that will be called for? A. Yes ; I have no doubt it will. And, as Mr. Foster, who is one of the best business men in the city of Boston, said, and I agree with him, if it cost twice as much, I believe the town of Brookline would get it all back in money before many years. The taxable property would be so much increased that the cost to the town, eventually, would be nothing.

The CHAIRMAN. I will ask if the rest of your evidence is not merely cumulative, to the effect that the witnesses are old residents of Brookline and are in favor of the project?

Mr. FAY. There are several more citizens of Brookline here who are prepared to testify to the same general facts that have already been testified to, but if the committee are satisfied with what they have heard, we will not put on any more witnesses.

The CHAIRMAN. It is the opinion of the chair that inasmuch as the witnesses you would call would testify substantially as has been testified, it will not be necessary to hear them, and the chair would ask you merely to hand in their names.

Messrs. Jerome Jones, Wm. J. Griggs and Jacob W. Pierce, large owners of real estate in Brookline, not abutting on Beacon Street, were also present and favored the Act, as submitted, without any amendments.

REMARKS OF HENRY D. HYDE, ESQ.

Mr. Chairman and Gentlemen:

I will only say a few words, in a narrative form, to show how this matter has come up. Beacon Street, at its present width, has been found to be insufficient for the public necessities, and for many years a discussion has been going on as to its being widened. Those of us who live in this community and are familiar with the location know that although this is the direct avenue leading out to the West, there never have been any substantial improvements in real estate in that direction. There have never been any means of transportation, and within the past twenty-five years hardly a half a dozen houses have been erected upon the line of the avenue in the town of Brookline. While other parts of the town have been accommodated by the steam railroad and the horse cars, and have grown rapidly, this part of the town has merely held its own for many years. I have lived in Boston about twenty-five years, and I do not remember of more than two or three houses that I have seen in the course of construction on that street in the town of Brookline during that

time, and I am informed that there have been but very few more.

Now, about a year ago, Mr. Whitney, who has always been a resident in the town since he has lived in this part of the State, became a good deal interested in this matter, which had been for some time talked of among many public-spirited citizens of the town. It was very evident that nothing could be done if each man, having his own little lot of land, was put in the position of trying to get just as much as he could out of it. There must be the bringing together of a large amount of land, or else the price would be run up so high that it would be impossible to secure the land and to carry out the enterprise.

Now, those of you who are familiar with the location there will remember that Commonwealth Avenue has been extended until it joins Beacon Street, and that it is being so rapidly built upon that there are only scattering lots left, and very soon those will all be occupied. What next shall be done? Shall that beautiful avenue 200 feet wide, with its shade trees and beautiful drive-ways, a joy and a delight to all who come to Boston, and the pride of the State, stop when it comes to Beacon Street, or shall it be carried further West by the further carrying out of the policy which has been so profitable to the State and to the city of Boston? Mr. Whitney made up his mind that if the lands could be brought together, there was an opportunity for the extension of this avenue. Without saying anything to anybody, using his own money, he went to work and bought up very large tracts of land bordering upon the present Beacon Street, and he then invited gentlemen to join him in making a certain proposition to the town.

There were at that time five selectmen, and Mr. Whitney made a suggestion to them that if such a thing as this were done it would be done for all time, and the town would have a magnificent avenue, and that it could have it at a merely nominal expense compared with what it would cost at any other time. The selectmen of the town took the matter up and said they would look into it. And they took a good deal of time in looking into it,—what it would be, what the

grades would be, and what were the possibilities. And finally they said they would take the sense of the town informally upon it. They said: "We will not hold a town meeting in the sense of voting legally upon it, but we will informally take the sense of the town." Therefore they gave notice on a certain day in mid-summer, last Summer, to all the people of Brookline, that they would like to have them come and express themselves, *pro* and *con*, in regard to the matter,—whether it was a desirable thing for the town to enter upon, or even to further consider. It was not a meeting at which there was to be any voting, but every man was to have an opportunity to express his opinions.

Now, at that meeting there came in a petition signed by several hundred of the leading people of the town. When I say leading people, I do not speak of them in any sense except as leading tax-payers, but on that petition was placed a great majority of the taxable property of Brookline. Many of the citizens were away at the time, but still there was a large meeting. I was present, and the selectmen said to the citizens, "If you have anything to say, *pro* or *con*, we would like to have you express your sentiments." There was quite a discussion. This man said his house would be taken, and another said his land would be taken. "Well," the selectmen said, "we are not going to move in any haste; we are not going to disturb anybody; we only want to get your opinion and then we shall decide what to do about following the matter up." The result was that so far as there was any expression that day, it was very largely in favor of the measure. The selectmen felt they were authorized to look into the matter further, in view of what was said and of this petition from so large a number of the tax-payers, representing more than a majority of the tax-paying property in the town.

And they proceeded to look into it, and engineers ran the lines to find what the fills would be and what the cuts would be. At first this was talked of as an avenue 200 feet wide. The selectmen, meanwhile, were constantly making inquiries, and constantly feeling their way to see whether this was or was not a desirable project. As they began to talk with the

people who lived on the line of the road, and more or less of whose estates would be taken, some of them came forward and said, "If you make it as wide as you propose, it will ruin my lot. I have got a lot so shaped that I might, perhaps, be willing to give my land for this if you do not take quite so much, for I believe in it, but if I have got to give as much as will be required under this plan, what I have left will not be worth anything. Now, you make it a little less wide and we will favor it." The selectmen, after consulting with these men and taking their views, adopted the plan of 160 feet instead of 200 feet, and that was found to enable many estates to remain of such size as the owners desired, and still to give this beautiful avenue. The result was that finally the plans and the drawings and the estimates were made upon an avenue 160 feet wide.

Now, everybody knew this was going on. It took some fifteen field men to do it, and anyone driving out there in the pleasant weather of the Autumn would see these men out surveying and running the lines, and seeing how to take upon this side and upon that, and it was a matter of common talk in the town. Because, it was going to give Brookline this grand avenue, and people naturally were interested in it. So it was not a matter that was hid, but was a matter under full discussion. Any gentleman of us who lives in Boston, and who met Brookline people during the Autumn, found they were full of this subject, and were thinking it over and considering it.

All the while the selectmen were very cautious about expressing themselves; they did not say whether they would or would not favor it, when the time came to decide upon it. They simply said the feeling of the town was such that they believed it was their duty to look into the matter, and get the figures, and lay them before the town. Well, the returns were made by the field men, and, after they were brought together, knowing how often estimates do over-run, I personally went down, and saw the engineers, and made a verification of their figures in a variety of ways. For example, I said, "Are you sure as to the amount of earth you

will have to remove?" "Yes, we know our estimates are safe; we will guarantee our figures are right." "How as to the cost; how have you figured that, and what steps have you taken with contractors to verify your figures?" "Yes; we have gone over everything." And it is a thing which is easily verified. There is no rock cutting, practically, on the whole line; it is nothing but earth, and we know very well what the cost is of moving earth in road construction and in railroad construction. It is so much a cubic foot or cubic yard, and there is not much difficulty, when you know the nature of the soil, in telling what it will cost to move it. And the nature of the soil is well known there; there is, practically, no rock cutting, but it is so much filling and so much levelling. The engineers, therefore, allowed a large percentage for margin, and then handed in their figures. I have had some experience with such figures, and I believe the town of Brookline can rely on them. I do not believe there is any sensible man in the town, certainly no selectman or any man who has gone over the matter at all, who can examine the figures that Messrs. Lincoln and Aspinwall have made, without coming to the conclusion that it is safe to act on them.

The principal question is that of land damages. When a thing of this sort is started it is soon in the air; everybody sees it is desirable, and a man who owns a piece of land immediately puts a fancy price upon it, and before the time for laying out the road has come, the land has advanced so that the damages claimed are enormous. And we must bear in mind that we are not dealing here with a locality in which land is given away, but where all the land even now has a large value. The serious question with the selectmen, therefore, was, What shall be done about the land damages? They said, "We are not going to lay this road out and let everybody come in for damages afterwards. We are going to find out what it is going to cost for damages, as far as we can, before we take any further steps." So they came to the West End Land Company, which owned nearly half the frontage, and said, "Will you give your land for this pur-

pose?" Mr. Whitney said they would. "Well," the selectmen replied, "while we are willing to take your word, and that would be sufficient for us, yet we want it fixed so that if you should die no possible question could arise, and we shall insist that you convey or release in writing to the town all land damages, and all slopes and everything of the kind, and that the town be allowed a proper time in which to do the work." The result is that deeds were given to the town for about one-half of all the land required on the entire length of the road on both sides. The agreements expire next July. If the town lays out the way before next July all this land will be given free; and, of course, if the town does not lay it out, the land goes back to the owners.

And you will remember what Mr. Cotting said in this connection. I do not know how many of the committee know Mr. Cotting, but he is one of the largest representatives of trust property in the city of Boston. He represents the large David Sears estate, the Hemmenways, the Fifty Associates, the Amos Lawrence estate, and an immense amount of property. He and parties he represents have a large interest in land upon this avenue. Their land is the highest price land upon it, and unless they would give releases to the town the selectmen said they would not feel authorized to recommend the town to proceed. Their land commences at St. Mary's Street, near the Boston line, and runs out half a mile, and is already valuable, worth, say, a dollar a foot. Will these people give their land? was the next question. And Mr. Cotting went to work with Mr. Meredith, a well known real estate agent, and they obtained the giving of that land by the different families interested, and deeds have been filed with the town for acceptance before the first of July.

And then there were Jordan & Marsh, who owned a large tract of land on the line of the road. Mr. Marsh was dead; but Mr. Jordan said he would, and Mr. Hutchins, of Hutchins & Wheeler, representing them, said they would give their deeds to the town. So now I think four-fifths of the land has been given to the town, and the remaining one-

fifth is owned by people who have not yet been able to answer. One gentleman sent me word night before last, representing a large number of heirs out of the city, that in a day or two he expected to have the paper signed releasing their land to the town. He is one of the leading business men in Boston, and his wife is one of the heirs. Every man has been asked to say whether he would give his land or not, and if he would not give it, what would he take for it. It is now narrowed down to a very few people who have declined to give their land or take a reasonable sum for it. If a man has a house and lot, and if he gave his land would have nothing left, nobody expects him to give it. All we ask of him is to settle at a fair price.

The selectmen have been so careful and diligent, they have been at work upon it all the Fall and early Winter, that they have now got this down to a point where there is not a possible chance that the town will have to pay heavy land damages. I don't care how many juries there are, I do not believe that by taking what land remains to be taken the town can get any large amount on its hands. In all my experience with such matters I have never seen a body of men who have been so diligent and cautious as this Board of Selectmen has been. If we asked any questions as to what they proposed ultimately to do, they would never tell us, but they would simply say, "We want to know that the town will be protected before we will express any opinion about it." Finally, when the lands, so far as they could then be obtained, had been obtained, they had a meeting, and they had a full board in attendance. There were at first five selectmen, but one resigned afterwards, and that left four, and the four brought the matter before the town.

But now I must go back a little, and consider another matter for a moment. The first thought in connection with this improvement was that some provision must be made for transportation. Three years ago the people of Brighton and the people of Brookline united in a petition to the Metropolitan Railroad Company for railroad facilities giving direct communication with Boston, but they did not obtain

them. The selectmen of Brookline, therefore, when this matter came up, said that if this avenue was to be built and so many people were coming out there, some means must be provided for their transportation. Two hearing were given by the selectmen upon the subject, and at the conclusion of the hearings the selectmen gave to the West End Railroad Company a location along Beacon Street in the town of Brookline, but upon this condition: They said, "We are not going to give you a location to go trading around on, but you must sign an obligation that you will actually build the road within twelve months," and the company did. The selectmen tied the railway company by a personal contract, as no other railroad corporation ever was tied, saying: "We are not going to give you something that is not going to be used for the benefit of the town, and unless you sign an obligation to build this road, you shall not have a location." And the obligation was signed that the parties would build the road.

After having done all this, having spent so much time in investigation, and having taken six months to confer with the people of the town, the selectmen thought they were ready to go forward and lay out the road, after which the matter would come before the town meeting for approval. And then the question came up,—this being a county way, and as the plan proposed widening it in some places on one side and in some on the other, and thus in a sense shifting the location,—how far the town had control over it, whether they had all the authority that was necessary to do that and assess betterments. That raised a novel question. Since the county laid the road out the town has always dealt with it as a townway, making all the repairs and doing all that has been done to it, and the county never has had anything to do with it since it turned it over. Eminent legal authorities held that the town had full authority, but, with the extreme caution which has characterized them throughout this entire matter, the selectmen said, "We don't want to enter into a project which is going to involve us in litigation with our own people, and we want this done in a way so it

shall be legal, and so we shall have no question about it ; and we don't want to have to go into court, the first shovel-full of earth we dig, and have the question decided there of whether this is a town or a county way. We are going to proceed cautiously, as we have from the first, and we are going to the Legislature and ask them to declare that this is a townway, and that we have the same rights over it that we do over any other townway."

And all the town asks here, gentlemen, is that the Legislature will declare that Beacon Street in the town of Brookline is a townway, and then the town will have a right to deal with it. That is a common right of the citizens of the towns all over the Commonwealth. And it is an inherent right, because, about the first thing a man wants after the right to live, is the right to go somewhere. Massachusetts gives her people free highways, and to each town the authority, within its own limits, to determine what highways are necessary for the convenience and use of the citizens, they paying the bills. Now, all they ask here is that this committee will report to the Legislature this Act, and that the Legislature will pass it, giving them the control of this as a townway. It is wholly within their limits, and they are paying the bills themselves ; they don't ask the county to pay anything.

Now, irrespective of the gentlemen who are associated with him, Mr. Whitney has been very much interested in this project as a public-spirited citizen. He believed that after he was gone, and his children and his grand-children would have taken his place, this avenue would be such a magnificent public benefit, that people would remember with gratitude anybody who had been instrumental in giving it to them. He became so much interested in it, that one day, when somebody came in before the Board of Selectmen and began to talk about having to pay more taxes, Mr. Whitney said, "I will tell you what I will do. I am a citizen of Brookline ; my father lived and died here and I expect to live and die here, also ; I love this town, and I will give you, out of my own pocket, \$100,000 for the construction of this

avenue." It was a most munificent offer, and he stands today pledged to it. Of course the citizens have thanked him again and again for it, but it will be remembered long after they are gone, and his name and memory will be connected with this avenue as long as it shall last. This is something entirely aside from his associates. It is an offer made by him personally, as a citizen of Brookline, and made in the spirit which I have stated.

If there has been anything that has been carefully considered in Brookline of late years, if there has been anything that the town has been united in, it has been this project. Mr. Atkinson has been at two or three of the meetings and has taken the same position he has here. Every citizen has a right to favor or oppose any matter that comes before him, but it is certainly his duty to attend the town meetings, and it may happen, as it has in this case, that men who are at first opposed to a project, when they come to hear it discussed will change their minds and be in favor of it. Some people always feel cautious about things, some people are always conservative in their tendencies, and some people have habits of objecting. I will say frankly, I am not a citizen of Brookline, but Brookline has a great reputation on the town meeting question. There is no other town in the Commonwealth where there is such a large attendance at the town meetings, and where there is such a full discussion of questions. Mr. Atkinson said people sometimes get tired out before a vote is reached, and that may be true, but there is a free and full discussion. They discuss everything. If there is a town in the Commonwealth that can safely be left to manage its own affairs, it is the town of Brookline. There are always people there ready enough to let fly at somebody else, whenever they can get a chance. There is a great deal of independence there. Nobody controls that town, and nobody undertakes to, and everybody knows that if a matter comes up in town meeting it is bound to be discussed. There is no choking it off. There is presented there, perhaps, the best exponent of the old-fashioned town meeting, in the freest and fullest sense, that can be

found in the Commonwealth, certainly in any town as large as that. The meetings are held in the evenings, so that all the citizens can attend, and things are fully discussed.

Therefore, I believe you will be perfectly safe in granting what has been asked for here by the selectmen, represented by Mr. Williams, who has carefully drawn this bill; and, furthermore, I believe you will go outside of one of the traditions of the Commonwealth and of its law-makers, if you refuse to allow the town to control these matters which are within its own limits. And when they come here and ask you to put them in such a way that they shall not be involved in any legal intricacies, but that they shall have plain sailing all the way through, so that every man who gives his land shall know he is going to have the benefit of the avenue, so that every man whose land is taken shall know it is legally taken and he shall be paid for it, and so that every man who builds a house upon the avenue shall know he will have transportation to and from the city, I believe you should grant their petition, and give the town the control of this matter that they ask for. I know it is the wish of the town, and the sentiment of the whole community today is in favor of the widening of this street.

Mr. WILLIAMS. I have only a word or two to say, and before saying it I should like to put a question to Mr. James. It will only take a moment, and inasmuch as the course of the selectmen has been attacked by one or two of the remonstrants, I think I ought to call them.

TESTIMONY OF HORACE JAMES.

Q. (By Mr. WILLIAMS.) You are a member of the Board of Selectmen? A. I am.

Q. When were you first on the board? A. I was elected first in 1867, twenty years ago.

Q. How many years have you been off since that? A. Three.

Q. How many streets have you laid out in town. A. About fifty.

Q. How many have you constructed under the orders of the county commissioners in addition to those fifty? A. About a dozen. We have widened and altered nearly all the county ways, except Beacon Street, and perhaps we have made some alterations in Beacon Street, which were not by order of the county commissioners, however.

Q. I will ask you whether or not the details of the practical construction of these fifty or sixty roads have fallen to you while you have been a member of the board? A. To a certain extent.

Q. Do you think the board have taken proper precaution to investigate this subject and inform the town with regard to it? A. I do. I don't think, but I know.

Q. Mr. Aspinwall, of Messrs. Aspinwall & Lincoln, is the son of the gentleman who has testified here? A. Yes, sir.

Q. (By the COMMITTEE.) On what proportion of this proposed avenue have the claims for land and grade damages been actually released to the town? A. I think on about three-quarters.

Q. And the estimate of the selectmen, of \$264,000 for land damages, refers to what proportion of the length of the road? A. About a quarter part, perhaps.

CLOSING ARGUMENT OF MOSES WILLIAMS, ESQ.

In closing this case for the town, I am not going to discuss the main question. I wish to speak especially with regard to the amendments which are proposed here to the bill which is offered by the selectmen. I do not consider that the first amendment is within the purview of the vote of the town. It does not seem to me it is what the town voted that the selectmen should ask for here, and therefore I pass that by; although I think there are practical objections to it, which would be sufficient reason for rejecting it, independently of the vote of the town.

I would state that I appear here simply and solely for the selectmen. I have refused retainers in aid of the project, I have also refused to be employed against it. I simply represent the selectmen, and have no other connection in any way with the enterprise; no stock in the railroad

company, and no connection with it or with any land upon the proposed avenue. I have been from the first a believer in the enterprise, if it could be carried out at a proper cost. I have stated that I signed the original petition, and have made no secret of that, but beyond that I have no connection in any way with the enterprise.

Mr. Hyde referred to the fact that some months had passed before any suggestion was made that any legislation was necessary in regard to this matter, Judge Hoar having given an opinion that the town had authority to proceed. That is true. It is also true that my opinion was not asked with regard to it until just before the time when the town took action. At that time, at the request of the selectmen, I investigated the subject. I then talked with Judge Hoar, who happened to be an old and intimate friend of mine, and with Mr. Hyde and Mr. Drew, and with other gentlemen who had investigated the matter, and they all agreed, I think, without exception, when they heard the matters I suggested, that it would be safer to apply for a special Act to enable the town to carry out this great public improvement, rather than to place any weapons in the hands of the parties who had refused to give their land, which would enable them to extort large damages out of the town. This Act is intended to be an Act for the prompt settlement of this matter with the minimum of cost to the town of Brookline, and in that view I must object to these amendments.

It is perfectly true that it has been held in one case by the Supreme Court, as my brother White said, that a town can make a conditional acceptance of a way. The first case which Mr. Rufus Choate ever argued determines that question, the case of *Jones v. Andover*, 4 Pickering. But while it may be expedient for a little town in the country to vote to lay out a road costing \$500, providing it did not cost any more than that, it is very unwise to apply such a doctrine to this great improvement, which is to run along over several miles, and which is to cost between \$300,000 and \$400,000. And I believe if such a clause as this were put in here, that "such expenditure shall in no case exceed the appropriation made therefor at such meeting, and all

contracts made for expenditures beyond the said appropriation shall be void," the town's interest might very seriously suffer, because the town might be prevented from expending a little more money than at first contemplated, and thus getting the benefit of the betterments. It is very obvious that the betterment arising from a thoroughly constructed and finished avenue, such as is proposed, is one thing, and that the betterment arising from such a work partly done and then stopped, is another. In my judgment you may by this amendment compel the town to limit its betterments to such as may arise from a partially constructed street.

The only other point is the objection Mr. Blume made in the interest of one of the abutters who did not want the time extended. No valid reason was shown for it. I think it is obviously just and right that if these parties are to have the enormous benefit from this improvement, they should pay their share of the cost, when other gentlemen along the line of the road have given their land. If these gentlemen are coming in to collect their damages, we ought certainly to have a right within three years to go to the Court, or if they take us before a jury, to show to the jury that they have received a very large benefit, and that they ought to pay their proportionate share of the cost. I think it is very important that the matter should be dealt with as promptly as possible by the Legislature. The whole matter will be before the town, and it ought to be left without any amendment.

Mr. GEORGE GRIGGS. I would like to ask the counsel for the town whether, if the bill passes in the shape in which it now is, the selectmen will be confined in their laying out of the road to this particular plan, or whether it can be modified to the extent of varying a few feet or a few rods one way or the other.

Mr. WILLIAMS. I would say I am perfectly clear in the opinion that it can be modified in any way the selectmen and the town may see fit. The suggestion has been made to me that we usually have our annual meeting in March, and that that is a strong additional reason for prompt action in this matter by the Legislature, in order that the town may call it up and settle it before the regular routine business of the town is in order.

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